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MARYLAND LAND USE

AND

DEVELOPMENT PLANNING CODE

*Maryland. State Planning Dept.  
... Publication.*

Jan Krasnowiecki

University of Pennsylvania Law School

December 31, 1968

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## ARTICLE I

## GENERAL PROVISIONS

## 101. SHORT TITLE

This Act shall be known and may be cited as the "Maryland Land Use and Development Planning Code."

## 102. EFFECTIVE DATE (to be drafted)

## 103. CONSTRUCTION OF THE ACT

The provisions of this act shall not affect any act done, contract executed or liability incurred prior to its effective date, or affect any suit or prosecution pending or to be instituted, to enforce any law repealed by this act or any ordinance, regulation or order made pursuant to such law. All ordinances, regulations and orders made pursuant to any law repealed by this act shall continue in effect as if such law had not been repealed.

## 104. PROVISIONS SEVERABLE

The provisions of this act shall be severable and if any of its provisions shall be held to be unconstitutional, the validity of any of the remaining provisions of this act shall not be affected. It is hereby declared as the legislative intention that this act would have been adopted had such unconstitutional provision not been included therein.

## 105. APPROPRIATIONS, GRANTS AND GIFTS

Local governments are hereby authorized and empowered to make such appropriations as they deem necessary, to accept gifts, grants or bequests from public and private sources for the purpose of carrying out the powers and duties conferred by this act.



106. DEFINITIONS. As used in this act, except when the context clearly indicates otherwise:

"Aggrieved person" means any person who has a substantial claim that his personal and property rights have been adversely affected by government action or inaction in a manner which is different from the adverse effects suffered by the public at large but no such person shall be considered aggrieved if:

(1) his interest is to limit lawful competition or if he represents such an interest; or

(2) he was afforded a substantial opportunity to appear at a hearing on the governmental action in question and did not avail himself of that opportunity.

"Applicant" means any person who is entitled to file an application for development.

"Application for Development" means any plan, chart, drawing, sketch or specification required to be filed and approved prior to start of development.

"Developer" means any person who undertakes a development.

"Development" means:

(1) any activity on land which materially affects its natural condition, such as:

- (a) removal of trees or other natural cover;
- (b) substantial excavation or deposit of earth or other fill, including alteration in the banks of any river or other body of water;
- (c) construction, reconstruction, alteration or demolition of any improvement or structure;
- (d) dumping or parking any objects or materials, whether mobile or immobile, liquid or solid;
- (e) commencement of any use, including movement or transportation of people or goods, and every change in its type or intensity;



- (f) commencement of any noise, smoke or other emission and every change in its type or intensity.

(2) any change in the legal relationships of persons to land which materially affects the character or form of development, such as:

- (a) division of land into two or more parcels or units to facilitate separate transfer of title to each parcel or unit, hereinafter referred to as "subdivision".
- (b) entry into covenants or other agreements, or the creation of easements or other interests in land which restrict or require development.

"Governing body" means the legislative body of the local government.

"Land" means the earth, water and air, above or below the surface of the ground.

"Land use" means the continuation of any activity (including the continuation of an improvement) on land which would have been development when originally commenced.

"Local government" [to be drafted]

"Improvement" means any change or addition to land designed to facilitate land use, such as banks, fences, dykes, pipelines, poles, electrical conduits, streets, curbs, sidewalks and all structures.

"Order" means any final action of an administrative officer or agency granting or denying an application for development or for the continuation of a land use or imposing a restriction upon development or land use.

"Regulation" means any rule of general applicability and future effect including any map or plan.

"Restriction" means any matter contained in a regulation or order or in any map or plan which imposes any condition upon a development or land use or which prohibits a development or land use or which has the effect of making a development impossible as a practical matter.

"Site planning" means planning for the most appropriate arrangement of public and private improvements upon a site including control over subdivision and the imposition of re-



quirements and conditions to secure appropriate public and private services and facilities and the integrity of the approved development plan as more fully provided in Section 203.

"Structure" means any object constructed, installed or parked on land to facilitate land use, such as buildings, sheds, mobile homes or house boats, signs, and all additions thereto.

"Subdivision" means a division of land into two or more parcels or units to facilitate separate transfer of title to each parcel or unit.



## ARTICLE II

## LOCAL GOVERNMENT POWERS

## 201. GRANT OF POWER: PURPOSES.

(1) Every local government shall have power to regulate land use and development for the present and future health, safety and general welfare of its citizens. The powers granted herein shall be exercised with forethought and reasonable restraint so that the measures adopted will promote the economic prosperity of the community, secure continued improvement in the living conditions for all segments of the population and offer the maximum encouragement to private initiative for the accomplishment of these goals.

## 202. METHOD OF CONTROL

(1) A local government may exercise its powers under this Act by adopting and administering land use and development control regulations. The regulations may:

- (a) contain rules which are so described that their application in each individual case requires no more than a ministerial determination, hereinafter referred to as "general controls"; or
- (b) contain rules or standards whose application in each individual case requires an administrative determination involving judgment or discretion, hereinafter referred to as "special controls."

(2) The power to adopt and amend land use and development control regulations shall be lodged in the governing body but the governing body may delegate the power to the Land Development Agency.

(3) Land use and development control regulations may establish general or special controls by any appropriate means including words, maps, descriptions and performance standards.



## 203. SPECIAL CONTROLS: SITE PLANNING

(1) The land use and development regulations may control the site planning aspects of development by prohibiting or limiting the development of any land until an application for site planning approval has been submitted to and finally approved by the Land Planning Agency in accordance with rules or standards stated in the regulations.

(2) The procedures for site planning control are set forth in Section 206.

(3) The regulations governing site planning approval may:

- (a) require that the developer provide streets, walkways, curbs, gutters, street lights, fire hydrants, shade trees, water and sewerage facilities, proper grading and other similar improvements, hereinafter referred to as "basic site improvements."
- (b) prescribe the specifications for all basic site improvements. Such specifications may reflect anticipated increases in use by or for the benefit of persons residing, working or doing business within the site but the developer shall not be required to meet specifications which benefit future development of other land unless he has derived a similar benefit from prior development or unless the local government bears the added cost of such excess improvement.
- (c) require that the developer share the cost of any prior excess improvement (as defined in Subsection [b]) paid for by the local government which benefits his development to the extent of such benefit.
- (d) require that the developer contribute land for or make cash contributions toward capital expenditures on other public services and facilities, such as schools, parks or playgrounds, in accordance with standards which limit the contributions to the demand generated by his development and which take



into account the developer's ability to recoup the cost upon the balance of his project [but the powers granted by this paragraph shall not be exercised unless the local government establishes a program for making matching contributions to provide similar facilities for families which cannot afford to contribute to the capital cost thereof.]

- (e) give the Land Planning Agency broad discretion to secure the most appropriate arrangement of public and private improvements upon a site or the layout of a subdivision.
- (f) subject to the provisions of Section 206 (2) relating to timing, require that the developer furnish appropriate guarantees that the basic site improvements will be completed within a time specified by the Land Planning Agency;
- (g) if any basic site improvements or any other services or common facilities are to be owned and maintained privately, require that the developer create an appropriate organization for the continued operation and maintenance of such services and facilities and impose or authorize the Land Planning Agency to impose such additional conditions and requirements as are deemed necessary to protect the housing consumer such as the following: that the common facilities be improved and cleared of all liens prior to sale or rental of any home or dwelling unit and that the developer furnish appropriate assurances of proper management and maintenance during the sales or rental period; or that the developer clearly disclose to the housing consumer the risks and potential expenses that threaten full enjoyment of any services and common facilities offered with the home or dwelling unit.



## 204. SPECIAL CONTROLS: PLANNED UNIT

(1) The land use and development regulations may authorize the Land Planning Agency to approve development which combines two or more types of housing or industrial or commercial buildings and uses, or involves a combination of housing, industrial and commercial buildings and uses, planned and designed in relationship to each other within a project to be developed under unified sponsorship and control.

(2) The procedures for planned unit development control are set forth in Section 206.

(3) The regulations governing planned unit development shall provide rules or standards to guide the Land Planning Agency in its approval which may differ from those otherwise applicable to the various types of development included within the project and which may leave all questions of detail to be determined by the Land Planning Agency on an individual basis. The regulations may:

- (a) establish site planning requirements specially designed for planned unit development including all of the requirements authorized by Section 203, and in addition,
- (b) require that the developer furnish to the Land Planning Agency satisfactory evidence of his financial capacity to complete the project or so much of it as the Agency finds is capable of standing on its own.

## 205. OTHER SPECIAL CONTROLS

(1) In addition to planned unit development and site planning aspects of development, the land use and development regulations may subject other types of development or aspects of development to individual control by requiring that the developer submit such development or aspects of development for approval by the Land Planning Agency. The regulations shall provide rules or standards to guide the Land Planning Agency in its approval.

(2) The regulations may prescribe the conditions which shall be met by the developer upon application for special approval but the conditions shall not be more onerous than those authorized by Sections 203 and 204 relating to site planning and planned unit controls.



206. PROCEDURE FOR THE ADMINISTRATION OF SPECIAL CONTROLS.

(1) The land use and development regulations shall prescribe the procedures for securing approval of a development or any aspects of a development which are subject to special control. The procedures shall be consistent with the provisions of this Section.

(2) In order that the cost of development may be kept at a minimum and to preserve an appropriate flexibility in the plan for a large project, which is to be developed over a number of years, the Land Planning Agency shall have power to approve a preliminary plan by which the developer proposes to seek final approval and to develop the project by stages or sections and so to defer premature expenditures on land or on various improvements and guarantees provided that the Land Planning Agency finds that the proposed delay in final approval or in other commitments and guarantees will not adversely affect the interests of the early users of the development or the integrity of the development from a planning point of view. The regulations may authorize or require preliminary approval in any other case.

(3) The regulations governing preliminary and final approval may authorize the Land Planning Agency to require that the developer include such additional land in his development plan, make such disclosure of the interests and liens existing in the land covered by the plan, secure such releases and acquire such title prior to preliminary or final approval of his plan as the Agency deems necessary to protect any requirements adopted under paragraphs (a), (d), (f) and (g) of Section 203 (3); paragraph (b) of Section 204 (2) or under Section 205 (2).

(4) The regulations governing preliminary and final approval may prescribe or may authorize the Land Planning Agency to prescribe in each individual case the form of the preliminary or final plan and the documents which must accompany a submission for each approval including, when appropriate, draft covenants, easements, organization papers for private service and maintenance organizations, sketches of the buildings and other improvements. But the local government shall not require that preliminary plans and documents meet customary record and engineering standards so long as they contain adequate information upon which the Land Planning Agency can determine that the proposed development will meet all requirements if the developer proceeds in accordance with such plans and documents.



(5) Prior to the approval of a development plan, the Land Planning Agency shall hold a hearing. Subject to the provisions of Subsection (11), if a preliminary plan is submitted for approval, the hearing shall be held upon the preliminary plan and no further hearing shall be held on the final plan. The hearing on any plan shall be held within the time specified by Subsection (7) for decision thereon. Notice of the hearing shall be published in a newspaper of general circulation and shall be mailed by registered mail at the applicant's expense to the applicant and to such other persons as the local government shall by regulation require. All notices shall be published or mailed at least fifteen days before the hearing.

(6) The officer in charge of the hearing may administer oaths and compel the attendance of witnesses and the production of documents. All testimony by witnesses at any hearing shall be given under oath and every party of record shall have the right to cross-examine adverse witnesses but the officer in charge may require that parties representing similar viewpoints designate an appropriate spokesman on their behalf and may limit equally the number of witnesses to be presented by the proponents and opponents of the development and the time allowed for the testimony and cross examination of each witness. A verbatim record of the hearing shall be kept stenographically or by an appropriate sound recording device. All exhibits accepted in evidence shall be identified and duly preserved or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record. Any member of the public shall be entitled to make copies of the record and of the exhibits at his own expense.

(7) Within sixty days following the submission of any development plan (preliminary or final), the Land Planning Agency shall render a decision either approving or disapproving the plan or approving subject to conditions. Failure to render a decision within the time specified shall be deemed an approval of the plan as submitted. If the plan is approved subject to conditions unacceptable to the applicant, he may treat the decision as a disapproval for purposes of an appeal.

(8) The decision of the Agency on each development plan shall be in writing and shall include not only conclusions but also findings of fact justifying the decision in the light of the rules and standards prescribed by regulation and of the requirements of this Act. The decision shall be accompanied by an order setting the time or times when the developer is required to submit final plans, if any, and to commence or to complete any stage of the development or to meet any other condition such as furnishing guarantees and obtaining releases. A copy of the decision



shall be served personally on the developer or upon his attorney and shall be filed with the Agency and made available for copying and inspection by any member of the public at his expense. Filing shall be notice to all persons except the developer.

(9) Subject to such reasonable conditions as the Agency finds necessary to impose in order to secure the financial responsibility of a named developer (pursuant to paragraph (b) of Section 204 [3]), an order granting preliminary or final approval shall create in favor of any person who is entitled to develop the land in question, an irrevocable right to final approval in accordance with the terms of the preliminary approval and the right to commence and to complete the development therein described provided that the developer remains in substantial compliance with the schedule set forth in the order. The terms of every approval shall by implication incorporate all of the submissions made by the developer including all of the plans, sketches, specifications, easements, covenants, bonds and other agreements (whether in final or draft form) upon which the approval was based.

(10) After the approval of any development plan (whether preliminary or final), the use and development of the land in question shall be controlled by the provisions of the applicable regulations as construed by the terms of the approval and all of the terms thereof shall be deemed an integral part of the land use and development controls for such land and shall be enforceable by the local government as such.

(11) When a hearing has been held on any approval, the Land Planning Agency shall not thereafter make or consent to a substantial modification thereof unless it holds a hearing on the modification.

## 207. ADOPTION AND AMENDMENT OF LAND USE AND DEVELOPMENT CONTROL REGULATIONS

(1) Prior to the adoption or amendment of any land use and development regulation, the proposed regulation shall be referred to the planning staff of the Land Planning Agency or to a planning consultant appointed by the Agency for a report and recommendations. The report shall be made available for public inspection at least three days prior to the hearing on the proposed regulation. A public hearing shall be held upon the proposed regulation. Notice of the hearing shall be published in a newspaper of general circulation at least fifteen days prior to the hearing. After the hearing, the regulations may be adopted as proposed. The proposed regulations may be



modified and adopted as modified without further hearing or reference for a report. If the planning staff or consultant fails to render a report within the time specified or if the proposed regulations are modified and the report does not affirmatively support such modification the recommendations shall be deemed adverse to the adoption of the proposed regulation. The local government may adopt a regulation contrary to the recommendations of the report but in such case the adoption shall require the affirmative vote of two-thirds of the entire membership of the governing body (notwithstanding that the power to adopt the regulation has been delegated to the Agency pursuant to Section 202 [2]).

(2) In addition to the procedure prescribed by Subsection (2) for amendment of any land use or development regulation, certain kinds of amendments, hereinafter referred to as "special amendments" shall be governed by the procedures and requirements set forth in Subsection (3). An amendment shall be treated as a special amendment:

- (a) if the owner of any parcel included within the proposed amendment or anyone acting with his consent or on his behalf appears at the hearing in support of the amendment and presents any testimony or any exhibits (such as sketches or plans) which describe any one or more characteristics of a proposed development of the parcel with greater specificity than does the text or map of the proposed amendment or if the landowner or anyone acting with his consent or on his behalf has filed an application for development with the Land Planning Agency which contains similar information; or
- (b) if the amendment is limited to a single parcel or several parcels under related ownership or control.

(3) All special amendments shall be treated as if the owner of any parcels described in paragraphs (a) and (b) of Subsection (2) had filed an application for the approval of a preliminary development plan and shall be governed by all of the provisions of Section 206 subject to the following:

- (a) if the owner or anyone acting on his behalf or with his consent has not in fact submitted a plan of the quality which would be sufficient for pre-



liminary approval he shall be given an opportunity to do so and the local government shall not proceed further until he does so;

- (b) the hearing required by Section 206 (5) shall be conducted by the governing body or agency which has the power to adopt the amendment and it shall make the findings and issue the order called for by Section 206 (9);
- (c) failure to adopt the amendment or make a decision upon the development plan within the time specified in Section 206 (7) shall not be deemed an adoption of the amendment or approval of the plan;
- (d) the adopting body may approve the plan of development, impose any appropriate condition thereon and adopt the amendment notwithstanding that the existing ordinances contain no standards governing such amendment or approval but such approval and amendment shall be subject to the standards prescribed in Section 208 and to the limitations imposed by law upon the exercise of the powers conferred by this Act and the adopting body shall give reasons and make findings justifying its decision in the light thereof as provided in Section 206 (8);
- (e) approval of the plan and adoption of the proposed amendment shall have all the effects set forth in Section 206 (9) and the parcel or parcels in question shall be subject to the terms of the approval as therein defined;
- (f) after adoption of the amendment the adopting body may refer the proposed development to the Land Development Agency for further processing in accordance with the terms of the amendment and approved plan of development.



208. STANDARDS FOR AMENDMENT OF LAND USE AND  
DEVELOPMENT CONTROL REGULATIONS

(1) The rule commonly known as the "mistake or change of conditions" rule is hereby abolished except that if an amendment has been proposed and after a hearing thereon has not been adopted, no similar amendment shall be adopted within [ ] years of the last proposal (dated from the close of the hearings on such proposal) unless the local government finds that there has been a material change in the facts and circumstances existing at the time of the last proposal justifying a reversal of the former position. Such findings shall be made in writing and shall be supported by the record made at the hearing.

(2) No special amendment shall be valid unless the development thereby authorized:

- (a) is reasonably related to the recommendations of the latest report filed pursuant to Section 303.
- (b) will not have a substantial adverse effect on the enjoyment of nearby dwelling units, if any.



## ARTICLE III

## LOCAL GOVERNMENT PLANNING ADMINISTRATION

## 301. LAND PLANNING AGENCY

(1) Every local government exercising any of the powers conferred by this Act shall appoint a Land Planning Agency.

(2) The affairs of the Land Planning Agency shall be conducted by a Board of three or any multiple of three members acting in consultation with the advisory membership of the Board. The members shall be appointed by the governing body who may remove any member in the same manner as provided for his appointment. The advisory members of the Board shall have a right to participate without a vote at all regular and special meetings of the board and at all hearings conducted by any member of the board, and shall consist of the following:

- (a) the heads of the departments or agencies who are in charge, within the local government, of education, public works, health and the local government budget;
- (b) the chief executive of the local government and the president or chairman of its governing body;
- (c) any other local, regional or state officials designated by the local governing body or by the State Planning Department.

(3) Within the limits of the funds appropriated by the governing body, the Agency may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services. Members of the Board may receive such compensation for the performance of their duties, as may be fixed by the governing body.

(4) Whenever the Agency is required by this Act or by any regulation adopted under this Act to decide any matter after a hearing, the decision of the Agency may be rendered by a majority of any three members who shall have heard the matter but the governing body may authorize the Agency to hear all or certain kinds of matters by a single member and in such case the decision of the Agency may be rendered by that member.



(5) The Agency shall publish, in a form which may be readily obtained or purchased, a description of its organization, the title of the officers who are responsible for actions taken by its clerical personnel, and all regulations governing the public.

(6) Within the limits of the authority, if any, conferred upon it by the governing body pursuant to Section 202 (2), the Agency may adopt and from time to time amend land use and development control regulations in accordance with the procedures and subject to the standards set forth in Sections 207 and 208. In addition, the Agency may adopt such other housekeeping rules and rules of practice and procedure before the Agency as one not inconsistent with this Act and the land use and development control regulations adopted pursuant to this Act.

302. POWERS AND DUTIES OF THE LAND PLANNING AGENCY:  
VARIANCES, ERRORS OF ADMINISTRATIVE PERSONNEL

(1) In addition to the powers vested in it pursuant to Article II, the Land Planning Agency shall have exclusive power to:

- (a) determine compliance with any regulation or order adopted under this Act and to issue permits or certificates evidencing the same;
- (b) hear and decide appeals from the action of any agency employee or officer of the local government (including any employee or officer of the Agency) wherein it is alleged that such agency, employee or officer has issued or denied a permit in violation of any provision of a regulation adopted under this Act or of an order issued by the Agency pursuant thereto. An appeal under this Subsection may be brought by any agency or officer of the local government (including any officer of the Agency) or by any person aggrieved by the action in question. An oral hearing need not be held on such appeal but the Agency shall give all interested persons an opportunity to make written representations. The appeal shall be filed within thirty



days of the issuance or denial of the permit. If the appeal is against the issuance of a permit, notice of the appeal shall be given to the permittee. Such appeal shall not stay the permit but the parties may apply to Court for the relief authorized under Subsections (5) and (6) of Section 401. If the Agency does not render a decision on the appeal within thirty days of its filing it shall be deemed to have approved of the action appealed from;

- (c) hear and decide applications for variances where it is alleged that the provisions of any regulation adopted pursuant to this Act inflict unnecessary hardship upon the applicant as more fully provided in Subsection (2).

(2) The procedure upon application for a variance shall be the same as that authorized or required for the approval of a development plan under Section 206 except that failure to act on an application within the time prescribed by Section 206 (7) shall be deemed a denial of the application. All powers which a local government may authorize the agency to exercise in connection with site planning and planned unit approval shall be deemed authorized for purposes of the approval or disapproval of a variance and the Agency may impose such additional conditions upon the grant of a variance as it deems necessary to implement the purposes of this Act or of any regulation adopted under this Act. The Agency shall deny the application unless it finds that:

- (a) the unnecessary hardship imposed by the regulation is due to physical circumstances or conditions of the land in question and that such hardship is unique to such land and not generally existing on other land which is controlled by the same regulation;
- (b) the variance, if granted, will not have a substantial adverse effect on the enjoyment of nearby dwelling units, if any;



- (c) the variance, if granted, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation involved.

(3) The Land Planning Agency shall be responsible for the ongoing planning requirement of Section 303.

### 303. ONGOING PLANNING REQUIREMENT

(1) The Land Planning Agency shall undertake studies of the physical, economic and social factors relevant to the well being and future development of the community for the purpose of making annual reports and recommendations to the governing body as provided in this Section. The studies shall be conducted by the planning staff of the Agency and/or by an appropriate consultant and shall be undertaken by the Agency on a continuing basis so that the recommendations of each annual report may be supported by current information. The information developed by each study shall be formally submitted to the Agency Board and all such formal submissions shall be made available for public inspection. The studies shall provide the information necessary to guide both public and private action in matters of land use and development, including information about:

- (a) the existing and future characteristics of the population;
- (b) the needs of the community in terms of housing, education, recreation, commerce and industry, transportation and other public and private services and facilities;
- (c) the effect of existing and possible future land use and development upon the natural resources, including air, water, forests, soils, rivers and other waters, shorelines, wildlife and minerals;
- (d) how the needs and anticipated problems can be met by private and public action, including regulatory, fiscal and public works measures and the action of other governmental agencies.



(2) Within two years of the effective date of this Act and thereafter annually, the Land Planning Agency shall file a report with the governing body. The report shall be prepared by the planning staff of the Agency, or by an appropriate consultant (including the State Planning Department) and shall be adopted by the Agency Board with such modifications as the members deem appropriate. The report shall address itself to the matters enumerated in this Section by any appropriate means, including maps, text, studies, and other written or graphic material and may include minority views (including the views of the advisory members of the Board) and any other matter on which the Agency desires to report. The report and all final submissions made to the Board by the planning staff or consultants shall be made available for public inspection and a copy of the report shall be mailed to the Director of State Planning.

(3) The annual report shall be based upon the continuing studies described in Subsection (1) and shall:

- (a) contain specific recommendations for action in regard to both private and public land use and development including recommendations for regulatory, fiscal public works and other measures which in the opinion of the Land Planning Agency will best serve the short and long term interests of the community. For purposes of this section, the recommendations of a report shall include all maps, plans, studies and other written and graphic material accompanying the report or incorporated by reference therein;
- (b) index and locate all amendments to the land use and development control regulations, all variances, site planning, planned unit and other special approvals issued for the period covered by the report (such period for the first report running from the date when the Agency was appointed and for all subsequent reports from the latest entry in the last report). The report shall summarize the reasons, if any, officially given for each amendment and approval and state whether the reasons are or are not consistent with each other and with the recommendations of the last report, if any.



- (c) contain statements relating the recommendations of the current report to the recommendations of prior reports by noting the changes and modifications made therein and giving the reasons therefor.
- (d) contain statements relating the recommendations of the current report to the plans officially adopted by any other governmental agency by noting the consistencies or inconsistencies therein and giving reasons therefor.

(4) The governing body may adopt all or any part of the annual report by appropriate resolution. If adopted, the recommendations of the report shall constitute the official plan for the community until modified by the adoption of the recommendations of a subsequent report. Pending adoption, the report of the Land Planning Agency shall be advisory only but its recommendations may be used in evidence and shall be taken into account in any judicial proceeding to test the forethought or reasonableness of any action taken by the local government in the exercise of the powers conferred by this Act.

(5) If the Land Planning Agency fails to file a report as required by this Section, no amendment to the land use and development regulations, and no variance or other special approval adopted or given during the period commencing thirty days after a report was due and ending on the day when a report is filed shall be entitled to any presumption of validity.



## ARTICLE IV

## REVIEW OF LOCAL GOVERNMENT ACTION

## 401. ACTION BY PERSONS AGGRIEVED BY PERMITTED DEVELOPMENT

(1) Subject to the provisions of Subsection (4), any person who is aggrieved by a land use or a development which has been permitted by a regulation or order adopted under this Act may bring an action to review and set aside the permission in the Circuit Court of the county where the development is situated.

(2) The action under this Section shall be commenced within thirty days of the date when a copy of the challenged regulation or order is filed in the office of the Land Planning Agency.

(3) An action under this Section shall not stay the permission in question, but any party to the action may petition the court for an order restraining the developer and the local government from taking any further steps toward carrying out the development pending decision on the appeal.

(4) In an action under this Section, whether or not a restraining order is sought against the developer pursuant to Subsection (3), the developer may petition the court to rule upon the plaintiffs to post appropriate security as a condition to maintaining the action. The decision to grant or deny the petition and the amount of the security shall be within the sound discretion of the court. But no such petition shall be granted unless the developer consents to and the court concurrently issues an order restraining the developer from taking any further steps toward carrying out the development pending decision in the action.

(5) In addition to other relief available at law or in equity, the court may:

- (a) set aside the challenged permission and enjoin any development for a reasonable time to afford the local government an opportunity to adopt appropriate restrictions or to take any other appropriate action; or



- (b) order the imposition of appropriate restrictions upon the development or land use in question and sustain the permission in all other respects.

402. ACTION TO SET ASIDE A RESTRICTION IMPOSED  
UPON DEVELOPMENT

(1) Any person entitled to file an application to develop the land in question may bring an action in the Circuit Court of the county where the development is situated to set aside any restriction imposed thereon by a regulation or order adopted under this Act.

(2) An action to set aside a restriction imposed by regulation may be commenced at any time after its adoption but no question of an alleged defect in the procedure followed for adoption shall be raised in any proceeding filed more than thirty days after the date of adoption.

(3) An action to set aside a restriction imposed or confined by an order shall be commenced within thirty days of the date when such order was filed in the office of the Planning Agency.

(4) An action to set aside a restriction imposed or authorized by regulation may be commenced without prior application for development or for a permit if there is no reasonable possibility that the imposition can be avoided by such application or the complaint raises a substantial question that the standards for the imposition of the restriction are vague or inadequate.

(5) In addition to all other relief available at law or in equity, the court may:

- (a) set aside a challenged restriction and stay the effect of its judgment for a reasonable time to afford the local government an opportunity to adopt an alternative restriction or to take any other appropriate action. During the pendency of the stay, the court shall retain jurisdiction of the action and over the parties thereto and may hold such hearings and issue such supplementary orders as it deems necessary to secure the validity of the alternative restriction; or



- (b) set aside a challenged restriction and order approval of a proposed development as to all aspects or order approval as to some aspects and refer other aspects to the local government for appropriate action as provided in the preceding paragraph.

403.       PROCEDURE: REFERENCE TO STATE LAND DEVELOPMENT  
REVIEW BOARD

(1) Actions under Sections 401 and 402 shall be governed by [refer to appropriate Rules of Civil Procedure]. The action shall be brought against and the complaint shall be served upon the governing body, agency or officer who has adopted the regulation or has issued the order in question. In addition, a notice of the complaint shall be mailed by registered mail to each owner or applicant whose right to develop or to continue a use is in question. For identification of the owner or applicant, the plaintiff may rely upon the record of the agency or officer issuing the order or upon their names and addresses as they appear upon the real estate tax records.

(2) All persons entitled to notice under Subsection (1) shall be proper parties to the proceeding and may intervene as of course by filing notice of intervention. The court may in its discretion allow any other person to intervene.

(3) The plaintiff shall file with his complaint the original or certified copies of the transcript, if any, and all documents and papers constituting the record upon which the local determination was based and the local government shall furnish such record to the appellant at cost.

(4) The court may render its decision upon the record made before the local government or, if it appears to the court that additional evidence is necessary for the proper disposition of the action, it may:

- (a) take additional evidence; or
- (b) appoint the State Land Development Review Board to take additional evidence and to make a report and recommendations as provided in the succeeding subsections.



(5) If the action involves a substantial question relating to the control of any development designated by the State Planning Department pursuant to Section 501, the court shall not render final decision thereon without first ordering a report by the Land Development Review Board and according due consideration to the written recommendations of the Board.

(6) The court may order a report and recommendations from the Board in any other case.

(7) The court may order a report at any time before rendering final decision and it may proceed to the hearing of the case pending the report. If the Board does not submit a written report within sixty days of the order or such additional time as the court may allow, the court may render its decision without giving consideration to the report.

(8) Prior to rendering its report, the Board shall hold a hearing as provided by Section 601, but the court may:

- (a) limit the hearing to a review of the record before the court;
- (b) limit the evidence to be taken by the Board to specific questions;
- (c) limit the questions to be considered by the Board; and
- (d) make such other order with regard to the proceeding before the Board, timing and parties thereto as it deems necessary for the just and prompt disposition of the appeal.

(9) Before rendering its decision, the court shall afford the parties an opportunity to contest the findings and recommendations of the Board's report.



## ARTICLE V

## POWERS OF THE STATE PLANNING DEPARTMENT

## 501. REVIEW OF DESIGNATED DEVELOPMENT

(1) The State Planning Department may by regulation designate development which may have a substantial impact upon the interests of the State or of any region, hereinafter referred to as "designated development". The regulations adopted under this subsection shall include standards by which designated development shall be evaluated by the State Planning Department pursuant to the procedures set forth in this Section. The regulations may designate the development in question by any appropriate means, including maps, descriptions and performance standards and may include suggested land use and development controls recommended by the Department for adoption by local governments in regard to such development.

(2) The regulations adopted pursuant to Subsection (1) may require that the developer or the local government give appropriate notice of a designated development to the State Planning Department.

(3) If a designated development is proposed, the State Planning Department may, at any time prior to final action thereon by the local government or governments involved, on its own motion or on application of any interested person, apply to the Circuit Court of the County wherein the development is located for an order enjoining the development and staying all local action thereon until a hearing on the proposed development can be held. The order may be issued ex parte if the court is satisfied that the development in question is a designated development and that a substantial state or regional interest is involved. The order shall be effective for thirty days and shall not be extended except for good cause shown.

(4) Any developer may, at any time before or after submitting his proposal to the local government, apply to the State Planning Department for a certificate that his development does not constitute a designated development or that the Department will not seek an order pursuant to Subsection (3). A certificate issued by the Department pursuant to this Subsection shall be final and conclusive as to all matters therein contained.

(5) The order issued pursuant to Subsection (3) shall set the time and place for the hearing by the Department allowing at least ten days' notice thereof to the parties listed in the order. In addition, notice shall be published in a newspaper of general circulation in the area where the development is situated.



(6) At the conclusion of the hearing, the State Planning Department shall prepare written findings and recommendations as to the most appropriate action to be taken by the local government in regard to the proposed development. The written recommendations shall be served upon the appropriate official of the local government, and the effect of the order issued pursuant to Subsection (3) shall automatically terminate at the end of the third day following the day of service. Whereupon the local government or governments involved may take such action in regard to the proposed development as they deem appropriate including any action which is contrary to the recommendations of the Department, but in such case, the governing body, agency or officer responsible for the action shall give written reasons why the recommendations of the Department were not followed. The written recommendations of the Department and the reasons why they were not followed shall be public record and shall be admissible in any judicial proceeding to test the validity of the action taken by the local government.

#### 502. REVIEW OF PROPOSALS FOR ANNEXATION

(1) Notwithstanding the provisions of Article 23A or any other law relating to annexation, no resolution to enlarge the boundaries of any incorporated municipality shall become effective unless prior to its enactment the proposal contained in the resolution is submitted for a hearing by the State Planning Department and the recommendations of the Department are duly considered by the governing body of such municipality, as hereinafter provided.

(2) After a resolution to enlarge the boundaries of any incorporated municipality has been introduced before the governing body and prior to any local hearing thereon, the governing body shall submit the proposal contained in the resolution to the State Planning Department. Within thirty days of the submission, the Department shall hold a hearing thereon, notice of the hearing shall be given in the same manner as provided for a local hearing on the resolution. Within ten days after the conclusion of the hearing, the Department shall serve its written recommendations on the governing body of the municipality or an appropriate agent thereof. The written recommendations shall contain the Department's findings as well as its recommendations and may contain any other matter which the Department deems appropriate to include.

(3) Upon receipt of the recommendations, the governing body of the municipality may hold a public hearing on the resolution and proceed to the enactment thereof as



provided by law notwithstanding that such enactment is contrary to the recommendations of the Department, but in such case the governing body shall give written reasons why the recommendations of the Department were not followed. The written recommendations of the Department and the reasons why they have not been followed shall be public record and shall be admissible in any judicial proceeding to test the validity of the action taken by the governing body.



ARTICLE VI  
ALTERNATIVE CONTROLS

601. LAND DEVELOPMENT REVIEW BOARD

(1) There is hereby created a Land Development Review Board which shall have the powers and functions hereinafter enumerated.

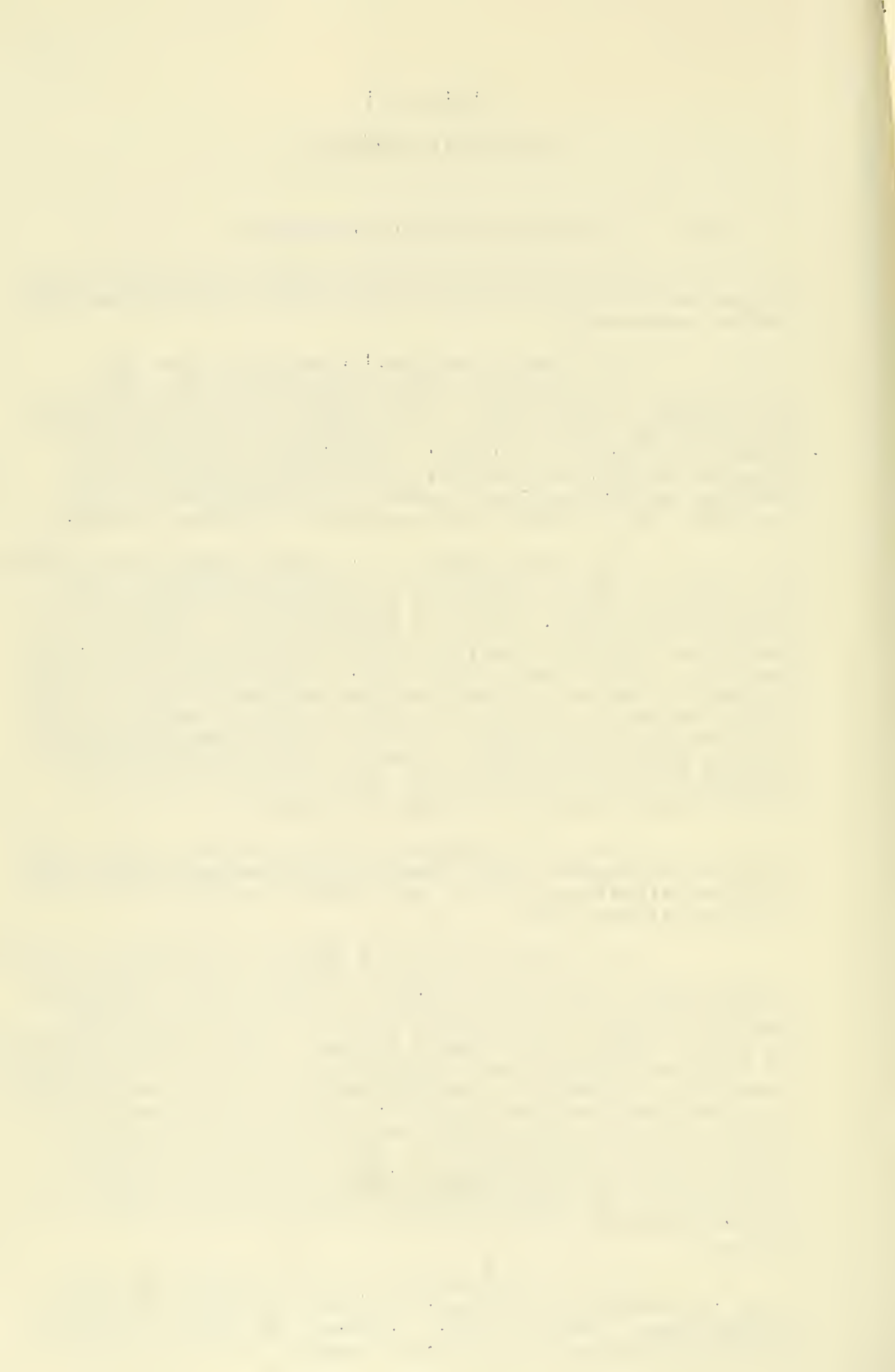
(2) The Board shall consist of five (5) members to be appointed by the Governor with the advice and consent of the Senate. The members of the Board shall be chosen for their extensive knowledge and experience in matters of land use and land development including planning and development control. The Governor shall designate one of the appointed members to be chairman of the Board who shall retain such status for his term of office.

(3) Each member of the Board shall hold office for four (4) years commencing on the first Monday of June next ensuing their respective appointments except that initially one member shall be appointed for a term of four years, one for three years, one for two years, and two for one year. Said Board members shall hold office until their respective successors are appointed and qualified. In case of any vacancy, the Governor shall appoint a successor for that unexpired term subject to the limitations and qualifications contained herein. Members of the Board may be appointed to serve more than one term and shall not be removed during their term except for cause.

(4) The chairman of the Board and each of the other Board members shall receive compensation as from time to time established by the Legislature, payable out of the Treasury of the State.

(5) The Board shall appoint an executive secretary to serve at the pleasure of the Board whose tenure and compensation shall not be subject to any of the provisions and restrictions of Article 64A of the Annotated Code of Maryland (1957), title "Merit System". The Attorney General of Maryland shall serve as legal counsel to the Board and the Board may, in addition, employ hearing officers and consultants who shall not be subject to the provisions and restrictions of Article 64A of the Annotated Code of Maryland (1957), title "Merit System". All other professional and non-professional employees of the Board shall be subject generally to the provisions and restrictions of Article 64A of the Annotated Code of Maryland (1957), title "Merit System".

(6) The Board shall have the power to call upon the services of appropriate personnel from any agency in the State, whether local, regional, or state, to aid in the determination of any matter brought to its attention.



(7) The Board shall provide for the services of a court reporter at all hearings. Copies of the record of proceedings before the Board shall be furnished to the parties in the same manner and upon the same conditions that records and proceedings are furnished in the law or equity courts of the State.

(8) The Board shall adopt a seal, and the principal office of the Board shall be at such place as the Legislature shall determine. The Board shall be supplied with all necessary books, maps, charts, stationery, office furniture, telephone and telegraph connections, appliances, and incidentals to be paid for out of the funds provided for expenses of the Board in the State budget.

(9) The offices of the Board shall be open for business during such hours as the Board shall deem proper and necessary, and one or more responsible persons to be designated by the Board shall be on duty at all such times in immediate charge thereof.

(10) Whenever the Land Development Review Board is required pursuant to this Article to hear and make findings or recommendations as to any matter, the hearing shall be conducted in accordance with Article 41, Sections 245-257 (Administrative Procedure Act) and may be heard by any one member of the Board or by a hearing officer. The findings and recommendations of the Board shall be adopted by not less than three members of the Board who shall have familiarized themselves with the record unless the parties consent to a determination by the hearing officer or by the member who has heard the matter. The Board is empowered to sit for the hearing of matters within its jurisdiction in any place in the State.

(11) Subject to the provisions of this Article, the Land Development Review Board shall have power to adopt such reasonable rules of procedure as it deems appropriate.

#### 602. JUDICIAL REVIEW: REPORT AND RECOMMENDATIONS BY THE BOARD

(1) The Land Development Review Board shall act as referee and make recommendations to the Circuit Courts in land use and development matters as provided in Section 403.



## 603. COMPENSABLE REGULATIONS

(1) The State Planning Department and, with the approval of the Department, any local government, or governmental agency, may regulate land use and development and establish a scheme of compensation as hereinafter provided. The powers granted herein shall be in addition to and not in derogation of the powers otherwise conferred by law.

(2) The power to adopt a scheme of compensable regulations may be used for the following purposes:

- (a) to reserve land for future acquisition for public use;
- (b) to prevent development which will unreasonably burden or interfere with the use of a public facility;
- (c) to prevent floods, flood damage, soil erosion, and to conserve areas needed for water supply;
- (d) to preserve significant architectural, historical, and natural landmarks;
- (e) to preserve accessible areas of natural beauty and natural habitats for wildlife.

## 604. PROCEDURE FOR ADOPTION OF REGULATIONS

(1) Prior to the adoption of a scheme of compensable regulations, the State Planning Department shall hold a hearing upon the proposal. The proposal shall include:

- (a) a legal description of the land covered by the proposal and the names and addresses of all persons who have a compensable interest in such land;
- (b) a copy of the proposed regulations;



- (c) a statement of the purposes which the proposed regulations are designed to serve;
- (d) if the purpose is future acquisition for public use, a schedule of the proposed times of acquisition or, if such times are indefinite, a statement to this effect together with the reasons therefor;
- (e) if no future public use is proposed, a statement of the time over which the regulations will be maintained or, if the time is indefinite, a statement to this effect together with the reasons therefor;
- (f) proposed provisions setting forth the procedure for determining and for paying the compensation which shall be consistent with the provisions of Section 606;
- (g) for each record parcel included within the proposal, an estimate of the owner's investment therein as defined in Section 605;
- (h) an estimate of the compensation which the proponent expects to pay under the scheme.

(2) Notice of the hearing shall be published in a newspaper of general circulation in the area covered by the proposed scheme and shall be mailed, by registered mail, to every person who has a compensable interest in the land and to all local governments and governmental agencies operating within the area. The notice shall contain a description of the land covered by the proposal and either the text or a brief description of the proposal together with a statement where the documents comprising the proposal may be examined. All notices shall be published or mailed at least thirty days before a hearing.

(3) The State Planning Department shall not adopt the proposal nor approve its adoption unless it finds:

- (a) that the proposal will serve the purposes listed in Subsection (2) of Section 603;



- (b) that the proposal will serve the interests of the locality and of the state or region of which it is a part;
- (c) that the procedure for determining and paying compensation is reasonable and consistent with the provisions of Section 606 and that payment is sufficiently assured.

605. MEASURE OF COMPENSATION: OWNERS' INVESTMENT

(1) Every person whose interests in land have been subjected to compensable regulation shall have a right to claim compensation as provided in Section 606 in an amount not to exceed the difference between the owners' unrecovered investment (established as provided in Subsection [2]) allocable to his interest in the land and the fair market value of his interest restricted by the compensable regulation, subject to the following:

- (a) the value of the land restricted by the compensable regulation in question shall be determined on the assumption that all permits which are reasonably available have been granted except when this assumption is contrary to fact;
- (b) the claimant's compensable loss shall be reduced by or shall include the net increase or decrease in the value of all his interests in land (whether lying within or without the regulated area and without regard to lot or parcel lines) attributable to the regulation in question. The net increase or decrease shall be determined as of the time when the award of compensation is made.

(2) Immediately after compensable regulations are adopted, the adopting government or agency shall notify each person who has a compensable interest in the regulated land by registered mail, of the amount of the owners' investment which the government or agency has established for the record parcel in which such person has an interest. The original amount of the owners' investment shall be equal to the fair market value of the parcel as defined in Section 6, Article 33A, Maryland Code, subject to the following:



- (a) The relevant value shall be the value existing on the date when the regulations were adopted but such value shall be determined as if the regulations had never been announced or adopted so that the original owner's investment shall reflect the value of the parcel as it would have been on such date if the announcement and adoption had not occurred; and
- (b) each record parcel shall be valued as a unit, that is, except as to interests which are appurtenant to other parcels (whether situated within or without the regulated area) and which form part of the value of such other parcels, without regard to the several interests therein, if any, or the encumbrances thereon, if any, existing on the date of the valuation.

(3) Within thirty days of the receipt of the notice provided for in Subsection (2), the owner of any compensable interest in the regulated land may commence a proceeding in a court of law in the county where the land is situated to determine the proper amount of the original investment that ought to be recognized for the parcel in which he has an interest. Such proceeding shall be governed, except to the extent that the positions of plaintiffs and defendants therein are reversed, by the relevant provisions of Rule U, Maryland Rules of Procedure. The proceeding provided herein shall be the exclusive method for testing the amount of the original investment established by the adopting government or agency pursuant to Subsection (2).

(4) For purposes of determining the amount of compensation payable to any claimant at any particular time, the owners' unrecovered investment shall mean the original investment for the parcel in question (established as provided in Subsection [2]) adjusted by an appropriate factor to reflect changes in the value of the dollar since the date when the original investment was established and reduced by the amount of compensation paid in respect of such parcel adjusted by said factor to reflect changes in the value of the dollar since the date when such amount was paid.



(5) In order to encourage the owners to remain in the regulated area and to postpone claims for compensation, the adopting government or agency may in addition to the adjustment required by Subsection (4) provide a reasonable allowance for profit on the original investment.

#### 606. PROCEDURE FOR CLAIMING COMPENSATION: TIMING

(1) The government or agency that adopts a scheme of compensable regulations shall establish an appropriate procedure for determining and for paying claims thereunder.

(2) For the purpose of establishing his true loss, the claimant may be required to offer his interest in the restricted land for sale on the open market as a condition to a claim for compensation and his right to compensation may be postponed for such reasonable time as may be necessary to establish accurately the net effect of the regulations on the value of his other interest in land as provided in Section 605 (1) (b).

#### 607. MODIFICATION OR WITHDRAWAL OF REGULATION: RECAPTURE OF COMPENSATION PAID

(1) The government or agency that has adopted a scheme of compensable regulations may at any time prior to actual payment of compensation deprive the claimant of his claim by withdrawing or modifying the regulation provided that if the claimant files a claim for compensation and thereafter, pending the determination of the claim, sells his interests in the restricted land or in the other relevant land referred to in Section 605 (1) (b) while the regulation continues in effect, his right to compensation shall not be affected by the subsequent withdrawal or modification of the regulation.

(2) If compensation has been paid in respect of any interest in land and thereafter the regulations are withdrawn or modified, the governmental agency may recapture the compensation paid by assessment against the current owner of such interest (including a reversicner) in an amount equal to the compensation paid plus interest from the date of payment but not in excess of the benefit conferred by the withdrawal or modification.



(3) If the regulations are modified as to any record parcel and compensation previously paid is recaptured as provided in Subsection (2), the owners' unrecovered investment for that parcel shall be adjusted upward to include the amount of recaptured compensation.

608. CONDEMNATION

(1) If land regulated under this article is condemned at a time when the regulations are in force, the value of the land for purposes of compensation shall be its fair market value subject to the regulations but in no event shall the compensation be less than the owners' unrecovered investment therein as defined in Section 605.

